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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

**Petition for Reconsideration and Clarification
of Association of America's Public Television Stations and
Public Broadcasting Service**

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**PETITION FOR RECONSIDERATION AND CLARIFICATION
OF ASSOCIATION OF AMERICA'S PUBLIC TELEVISION
STATIONS AND PUBLIC BROADCASTING SERVICE**

The Association of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") (collectively "APTS/PBS") hereby file their Petition for Reconsideration and Clarification of the Commission's *Fifth Report and Order* and *Sixth Report and Order* in MM Docket No. 87-268 ("*Fifth Report*" and "*Sixth Report*" respectively, and, jointly, "*Reports*").¹ APTS/PBS have been active participants in all phases of this proceeding representing the interests of the nation's public television stations. They have filed comments in response to most of the Commission's Notices of Proposed Rulemaking and joined in selected comments filed by the Broadcasters Caucus, a broad coalition of television broadcast stations and networks.

¹ *Fifth Report and Order, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 62 Fed. Reg. 26966 (May 16, 1997); *Sixth Report and Order, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 62 Fed. Reg. 26684 (May 14, 1997).

I. INTRODUCTION & SUMMARY

APTS/PBS applaud the Commission's successful completion of the daunting task of establishing workable DTV rules and channel assignments that will facilitate the rapid and effective transition to a new, nationwide digital television system. The rules adopted in the *Reports* will allow most of the nation's television stations to serve their existing audiences with digital programming, minimize the disruption of existing television service, assure the continued reservation of channels for noncommercial educational use, and allow the nation's television stations to use digital technology in new and creative ways that hold the promise of expanding the services available to the nation. APTS/PBS particularly appreciate the Commission's recognition of the unique difficulties public television licensees will confront in converting to DTV and its expressed willingness to give those licensees flexibility in making the transition to digital television.²

APTS/PBS join the Petition for Clarification and Partial Reconsideration of the Association for Maximum Service Television, Inc., the Broadcasters Caucus and other Broadcasters. APTS/PBS support the positions except to the extent that the Petition challenges the 50 kilowatt minimum power and 1,000 kilowatt maximum power levels. APTS/PBS support the incorporation of these power levels into the Table of Digital Allotments ("the DTV Table") and would support exceptions to the power cap only in limited cases where necessary to correct serious replication problems.

² *Fifth Report* at ¶¶93, 104.

APTS/PBS file separately to highlight issues of particular concern to public television stations. First, APTS/PBS are concerned that the Commission's allotment of DTV channels outside the core to a number of public television stations will materially impair their ability to make the transition and could result in the loss of public television service at the end of the transition. Many public television licensees will have difficulty building a single DTV transmission facility, and, given their reliance on federal, state and private contributions for operation and capital expenditures, it will be difficult or even impossible for most public television licensees assigned channels outside the core to build a second DTV facility. These stations are thus in danger of not being able to complete the transition to digital, potentially resulting in the public's loss of the noncommercial educational services they offer.

APTS/PBS endorse the Broadcasters Caucus request that the Commission revise the DTV allotments and assignments in limited situations in order to correct severe interference and replication problems. APTS/PBS urge the Commission, in the course of making necessary adjustments to assign, whenever possible, core DTV channels to public television licensees currently allotted DTV channels outside the core. In all events, the Commission should give public television stations allotted channels outside the core greater flexibility than the DTV rules currently provide to deal with the burdens caused by out-of-core assignments.

In this Petition, APTS/PBS suggest a number of ways in which the Commission can provide these public television licensees with added flexibility to deal with the burdens of the transition to digital television. APTS/PBS also suggest other modifications to the Commission's rules which, if adopted, would give all public television licensees some options to allow these licensees to plan for the transition to DTV in a more orderly fashion than is currently the case without

affecting the basic planning factors and principles underlying the current Table of DTV Allotments. Specifically, APTS/PBS request that, on reconsideration, the Commission adopt the following options:

- give public television stations with DTV assignments outside the core the flexibility to select DTV channels in the core, even if the alternative channel does not fully comport with the Commission's planning factors, including, for example
 - channels that do not fully replicate their NTSC coverage,
 - channels that will require the station to operate from a transmitter site more than 5 km from its current site, or
 - channels that receive more interference from NTSC stations than the Commission's planning factors allowed;
- permit public television licensees with NTSC channels in the core, particularly those with DTV channels outside the core, to convert their NTSC channels to DTV at any point in the transition period without constructing a DTV station on their DTV channel;
- permit a licensee with both its NTSC and DTV channels outside the core to defer construction of its DTV station until its permanent DTV channel is assigned;
- give licensees with DTV channels outside the core the opportunity to select their permanent DTV channel well in advance of the end of the transition period so that they can plan for conversion on that channel;
- require the commercial successful bidders for the re-claimed spectrum to reimburse public television licensees for the costs of moving to a DTV channel in the core;
- allow public television licensees with two stations in a market to use any of the channels assigned to them for NTSC or DTV operation, as long as no additional interference is caused to other stations.
- relieve public television stations of the minimum hours of operation obligations that arise from the Commission's simulcasting requirement and from the requirement that licensees operate their DTV stations whenever they operate their NTSC stations ;

- give public television translator stations priority over other translators and low power television stations in finding new channels when they are displaced by DTV stations, by new NTSC stations commencing operation or by changes in the facilities of existing NTSC stations.

APTS/PBS also seek clarification of certain aspects of the *Reports*. It is particularly important to clarify that public television licensees can use the excess transmission capacity offered by digital transmission for commercial, revenue-generating purposes. Many public television stations are planning to use this excess capacity as a source of vitally needed, supplemental revenue to help defray the costs of constructing and operating their DTV facilities. While the *Fifth Report* appears to authorize public television stations to use this excess capacity for revenue generation, the *Report* is not entirely clear since it did not amend Section 73.621, the rule limiting public television stations to noncommercial, nonprofit services. APTS/PBS urge the Commission to make it clear that public television stations can fully use the excess capacity for revenue generation, as long as the revenue generating use does not derogate the free over-the-air broadcast service.

In addition, APTS/PBS urge the Commission to clarify that

- licensees may negotiate modifications to the Table among themselves, as long as no additional interference occurs;
- licensees that build limited DTV facilities will be protected throughout the service areas authorized under the Table of DTV Allotments, at least until the end of the transition;
- at the end of the transition, it will allocate reserved DTV channels for those deleted reserved NTSC channels that the Commission did not replace in the current Table.

II. PETITION FOR RECONSIDERATION

A. The Allotment of DTV Channels Outside the Core Imposes Significant Additional Burdens on Public Television Stations

In order to reclaim a portion of the spectrum for other uses, the Commission decided to concentrate television broadcasting into a "core" group of channels, either between Channels 2 and 46 or between Channels 7 and 51.³ NTSC and DTV channels outside the core will be recovered by the Commission for other uses at the end of the transition, which is currently scheduled for May 1, 2006.⁴ Licensees allotted DTV channels outside the core will be required to relocate to DTV channels within the core at the end of the transition, thereby requiring them to construct two DTV stations -- the first on their allotted DTV channel, which will be operated during the "transition" period; and the second, at the conclusion of the transition period, on a freed-up DTV channel located inside the core.

The Commission assigned between 42 and 54 public television stations DTV allotments outside of the core, depending upon whether the Commission ultimately decides on a "core" between Channels 2 and 46 or Channels 7 and 51.⁵ These stations include stations in the largest markets, New York and Los Angeles, as well as stations in smaller markets, such as Vincennes and Evansville, IN; Springfield, MA; and Bethlehem and Erie, PA. For the licensees of all of these stations, both larger and smaller market stations, it will be difficult to raise the added

³ *Sixth Report* at ¶76.

⁴ *Fifth Report* at ¶99. The Commission will also recover as soon as possible the available spectrum between Channels 60 and 69. *Sixth Report* at ¶76.

⁵ A list of the affected stations is attached as Appendix A.

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funds required to build two DTV stations in the very short span of 10 years; for some, particularly those in the smaller markets, it will likely be impossible.

As APTS/PBS noted in their earlier Comments,⁶ public television licensees must rely upon community campaign drives, corporate contributions, and state and federal funding to finance the transition to DTV. Asking these sources to contribute the funds necessary to construct a DTV station, currently estimated at approximately \$1.6 million on average, will strain the fundraising ability of virtually all of the nation's public television licensees—even those in the major markets. The Herculean task of raising contributions to fund the construction of DTV twice in a short ten-year period will be extremely difficult to impossible. Indeed, of the 59 public television licensees allotted DTV channels outside the core of channels 7 to 46, 17 have operating budgets of less than \$3 million and 26 have operating budgets of less than \$5 million.⁷ These licensees will be required to raise a considerable amount above their current operating budget every year for the next ten years.

It will be particularly difficult for public television to justify use of federal and state funding for the construction of a second DTV station. Public television is currently developing a case in support of a federal appropriations to fund the conversion to DTV. Given the constraints of balancing the federal budget, obtaining federal funding in the first instance will not be easy. It will be even more difficult to convince Congress that building a second DTV facility for the same licensee is not a wasteful and inefficient use of federal money.

⁶ Comments of APTS/PBS in MM Docket No. 87-268, filed January 7, 1993, at pp. 2-8.

⁷ These figures exclude state public television networks.

Similarly, state networks and other public television stations that receive state support must convince state legislatures of the need to construct DTV facilities. State legislatures, which are already burdened by the need to construct as many as 16 DTV stations in the next six years,⁸ are also likely to question the wisdom of funding additional stations where the network was assigned a DTV channel outside the core.

Moreover, the need to raise additional funds to construct a second DTV station may affect the ability of the licensees of even the largest stations to meet their operating expenses. Since capital funds must be raised from the same sources as operating funds, the requirement to convert a second station may jeopardize a station's ability to fund its operations. In addition, stations face the burden of substantially increased costs associated with operating two channels simultaneously.⁹

In short, the burden of raising the capital to construct two DTV stations within ten years may be insurmountable for some public television licensees, ultimately resulting in the loss of important noncommercial educational services to communities. For all, the assignment of DTV channels outside the core will be more costly, will complicate planning—especially since the “core” will not be known for some indeterminate period of time—and will make the transition by these stations to DTV more difficult.

⁸ Attached as Appendix C is a list of the state networks and the number of television stations in those networks.

⁹ The higher power costs of operating DTV stations in general and of operating stations in the upper portions of the UHF band will also increase the hardships for these public television licensees.

To alleviate these burdens, APTS/PBS urge the Commission to adopt the options set forth below.

B. The Commission Should Afford Public Television Stations With DTV Assignments Outside the Core Flexibility In Finding In-Core Channels

1. The Commission Should, To The Extent It Modifies The Table of DTV Allotments, Attempt To Assign Public Television Stations DTV Channels Between 7 and 46.

In its Petition for Reconsideration, the Broadcasters Caucus has identified a number of technical problems with some portions of the DTV Table, particularly in the northeastern United States, southern California, and the Detroit/Chicago/Milwaukee area. Given the relatively short time period for filing Petitions for Reconsideration and the fact that the Commission has not released OET Bulletin No. 69, the Broadcasters Caucus is requesting additional time to develop industry-coordinated solutions in the affected areas. As the Commission addresses the problems raised by the Broadcasters Caucus and its proposed solutions, APTS/PBS urge that every effort be made to provide public television licensees with assignments within the Commission's guaranteed core—Channels 7 and 46. This will assure that public television licensees can construct DTV stations on their assigned DTV channels without any risk of being relocated at the end of the transition.

Favoring in-core channels for public television stations will reduce the unique burdens associated with out-of-core assignments and will provide assurance that valuable public television service will not be lost at the end of the transition.

2. Public Television Stations Should Be Allowed To Employ DTV Channels That Vary From The Allotment Principles As Long As No Added Interference Is Caused

In their earlier comments, APTS/PBS suggested that the Commission give public television licensees assigned channels outside the core the ability to engineer alternative allotments within the core, even if the alternative allotment does not fully satisfy the allotment principles the Commission used in developing its DTV Table, as long as no additional interference is caused to existing NTSC stations or new DTV allotments.¹⁰ The Commission did not address that proposal in its *Reports*. APTS/PBS urge the Commission to adopt it on reconsideration. Public stations may prefer an in-core DTV channel that does not fully meet the FCC's allotment principles to avoid the costs of building two DTV stations.

Specifically, public television licensees should be allowed to use a DTV channel in the core even where (1) the channel may result in a DTV station that does not replicate the licensee's current NTSC service area as well as the allotted DTV channel outside the core, (2) the DTV channel has to be located at a site more than 5 kilometers from the station's current antenna site, or (3) the DTV channel would receive greater interference than permitted under the rules. In each case, of course, the proposed solution would be acceptable only if it did not cause additional interference to another DTV allotment, an existing NTSC station or a currently pending NTSC application, or if the affected licensee or applicant concurs.¹¹

¹⁰ The Comments of the Association of America's Public Television Stations and The Public Broadcasting Service in MM Docket No. 87-268, filed November 23, 1996 at pp. 31-35.

¹¹ See, 47 C.F.R. §73.634 (allowing analog stations to accept increased interference from a DTV station). In the case of state networks, the networks should be permitted to accept interference between and among their own stations, both NTSC and DTV. In that way they can decide the appropriate

While these suggestions vary from the principles used in developing the Table of DTV Allotments, they are not inconsistent with them. They protect DTV allotments in the Table and existing and proposed NTSC stations. These suggestions will, however, permit public television licensees to decide when the loss of service area or other constraint, such as the cost of relocating their antenna site, outweighs the costs of constructing two DTV stations. In that manner, these proposals will allow public stations with allotments outside the core to make firm plans to transition to DTV and will assure that stations that cannot afford to construct two DTV stations are nonetheless able to convert to DTV.

3. Public Television Licensees With A DTV Channel Outside The Core But An NTSC Channel Inside The Core Should Be Allowed To Switch Overnight To DTV On Their NTSC Channel.

Given the well known funding uncertainties faced by public television, APTS/PBS are concerned that many of the public television stations with DTV allotments outside the core, particularly those in smaller markets, will be unable to raise the funds necessary to construct two DTV stations. Since these stations will be required to give up their out-of-core channels and to cease NTSC operation at the end of the transition, their inability to construct a second DTV station will result in the loss of public television service at the end of the transition. Such a result is manifestly inconsistent with established Commission and Congressional policy promoting nationwide public television service.

balance between the costs of building extra stations and their obligation to provide public television service to their States.

In order to avoid that result and to provide greater assurance that these stations can continue to provide public television service once the nation's television system has switched to digital, APTS/PBS urge the Commission to allow stations with DTV channels outside the core but NTSC channels inside the core to relinquish their DTV allotments and to switch to DTV operation on their in-core NTSC channels at any point in the transition. These stations would be required to elect this overnight switch option no later than the deadline for constructing their DTV stations, at which point the DTV channels would revert to the Commission. However, the Commission should allow the licensee to make the business decision when to convert to DTV. That decision will require consideration of a number of factors, including the DTV set penetration in its market, the costs of operating in a DTV mode as compared to an analog mode, and other unique business factors, which the licensee is in the best position to decide.

Since the Commission will allow stations with NTSC channels within the core to use either their NTSC or DTV channels at the end of the transition, adoption of this proposal for public television licensees is consistent with the Commission's DTV allotment scheme. Further, it will recognize the funding difficulties faced by public television licensees and will assure continued public television service where a public television licensee lacks the funds to construct two DTV stations. Moreover, the Commission will be able to reclaim the unused DTV channels for translators and displaced LPTV stations. Granting this option to the public television stations with DTV channels outside the core will not interfere with the transition to digital television. The commercial stations in the market will remain obligated to operate DTV stations in accordance with the Commission's time schedule and their operation will drive the demand for DTV receivers.

In order to facilitate this procedure, the Commission should specify that public stations choosing to use this overnight switch option will not lose their NTSC authorizations at such time as they advise the Commission of their decision not to construct a second facility on their DTV channels. Under the current DTV rules, a single license will be issued covering both the NTSC and DTV channels and the Commission has proposed to treat both licenses in parallel.¹² It is unclear, however, what will happen if a licensee surrenders either its NTSC or DTV channel during the transition. The licensee should be able to surrender one channel without affecting the other, particularly where, as here, a public television licensee makes the business decision that it cannot afford to construct two DTV stations. A public television licensee should not lose its ability to operate a DTV channel in those circumstances. Indeed, such a draconian rule would only deprive the public of public television service.

C. Public Television With Both NTSC and DTV Channels Outside the Core Should Be Given Special Relief

1. Public Television Licensees With Both NTSC and DTV Channels Outside The Core Should Be Permitted To Defer DTV Construction Until They Have a Permanent DTV Channel

Public television licensees with both their NTSC and DTV channels located outside the core who are unable to locate a DTV channel inside the core will obviously have the most difficulty in making the transition to DTV. There are 13 public television stations with both channels outside of channels 2-46 and an equal number outside channels 7-51;¹³ over half of those stations in each case have

¹² Fifth Report at ¶¶ 59-60.

¹³ See Appendix C.

operating budgets of less than \$5 million. Under the current rules, they not only will have to build two DTV stations, but will also have to migrate their viewers to a new channel at the end of the transition. And, because the Commission has not decided which “core” to use, these stations do not know what that channel will be or when they will learn of the assignment. This uncertainty makes planning for the transition extremely difficult and obtaining funding for the transition even harder.

Given public television’s precarious financial position and the burdens of raising the funding faced by these stations, the Commission should allow these public television stations to defer construction of their DTV facilities until the end of the transition period when they have been assigned a permanent DTV channel within the core. Unlike those public television stations with a one or both of their channels within the core, stations with both their NTSC and DTV channels outside the core will not have the option of an overnight switch to their NTSC channel. Permitting those stations to defer construction of their DTV station until their permanent DTV channel is assigned will ultimately serve the public interest. It will alleviate the burden on these stations to construct a DTV station—which must be abandoned in 2006 (some 3 or 4 years after it is built)—and will facilitate the continuation of valuable public television service after the transition.

2. Public Television Licensees With Both NTSC And DTV Allotments Outside The Core Must Be Given Substantial Advanced Notice of Their Permanent DTV Channel.

The Commission should give licensees with both NTSC and DTV allotments outside the core the opportunity to identify their DTV channel as early as possible in the transition. While the Commission has understandably not set forth in these *Reports* how it will effectuate the shut-down of NTSC operations and the relocation

of stations with DTV facilities outside the core, it should resolve ultimate channel assignments as soon as possible.

Stations need advance notice of their permanent DTV channels so that they can engineer and construct their permanent DTV stations before the end of the transition. In order to achieve that end, the Commission should require stations with both NTSC and DTV assignments in the core to select which channel they will use permanently several years before the end of the transition so that stations with both allotments outside the core have a reasonable opportunity to select their permanent channels.¹⁴ Ideally, these stations should be required to make their decisions at the end of the construction period or, at the latest, a year after they commence operation. That should give them sufficient time to decide which channel best suits their needs.

D. Commercial Entities Utilizing Reclaimed Broadcast Spectrum Should Be Required To Reimburse Public Television Licensees For Relocation Costs

While APTS/PBS believe that the best solution for the problems faced by public television stations with DTV assignments outside the core is to afford these stations the maximum flexibility to find channels in the core, APTS/PBS also urge the Commission to require the commercial entities that acquire the re-claimed spectrum to reimburse public television licensees for the costs of changing channels. While a less secure alternative than receiving a DTV channel within the core, the availability of that reimbursement will provide some additional assurance that public television stations will be able to continue operations after the transition.

¹⁴ Further, licensees with both allotments outside the core should be protected and not face the risk of competing applications when they apply for their permanent DTV channel.

The reimbursement could be either from a general pool of funds collected from the auctioned spectrum, from the commercial entities that acquire the spectrum in the affected market, or derived in such other manner the Commission decides. However, whatever reimbursement mechanism the Commission adopts, it must provide assurance now, on reconsideration, of timely reimbursement rather than in a future rulemaking. Without such present assurances, public stations required to relocate will be delayed in their transition to DTV due to difficulties in funding dual construction costs.¹⁵

Finally, the Commission should require commercial operators that acquire the reclaimed spectrum to reimburse the large number of public television translator stations that will be displaced as a result of the initiation of DTV service. These stations provide public television service to areas which would not otherwise receive public television programming and are vital to public television's ability to fulfill Congress' mandate that public television service be made available to all Americans.

¹⁵ Further, the reimbursement mechanism must be secure. Specifically, public broadcasters must be assured of: (i) sufficient funds to cover their relocation and associated costs; and (ii) payment in a timely manner. Absent such assurances, public television stations whose DTV channels are outside the core will not have the security needed to alleviate the planning and financial problems they face in constructing two DTV facilities. The Commission's recent experience with the requirement that PCS auction winners reimburse incumbent 2 GHz licensees who were required to relocate questions the efficacy of any such reimbursement scheme. See, *Second Report and Order, Amendment To The Commission's Rules Regarding A Plan For sharing The Costs Of Microwave Relocation*, 1997 WL 82594 (Feb. 27, 1997) at ¶5. (Rule amended governing this process to facilitate more effective negotiations among the parties in response to concerns that negotiations "were not progressing as fast as they should and were potentially delaying the deployment of PCS service to the public.")

E. A Public Television Station With An NTSC Channel Inside the Core Should Be Permitted To Switch Overnight To DTV On Its NTSC Channel

As indicated above, APTS/PBS are concerned that many smaller public television stations will not be able to raise the funds needed to construct their DTV stations within the timeframes established by the Commission or to operate two television stations at the same time. While stations with DTV allcments outside the core will be particularly hard hit, there are also a number of licensees with smaller budgets who are fearful that they may not be able to raise the \$1.6 million or more necessary to construct a DTV station within the 6 or 7 year time period set by the Commission. Others are worried about whether they can afford the huge power bills associated with a dual station operation.

In order to give these licensees the maximum flexibility to make the transition to DTV, APTS/PBS urge the Commission also to allow public television licensees with both an NTSC and DTV channel in the core to convert to DTV on their in-core NTSC rather than having to build a separate DTV station. These licensees would be required to make their decision no later than the end of the construction period and the DTV channel would be reclaimed by the Commission at that time. Allowing public televisions to make this choice will not undermine the Commission's DTV policies or delay the transition to DTV, since commercial stations will drive the transition. Indeed, the public television station that elects this option will do so with the recognition that it may lose a portion of its audience to commercial digital television and it will have to make the business decision that the costs of two stations outweigh any reduction in audience and contributions that result from its decision to operate in a single transmission mode. However, giving public television stations the ability to make this decision will enhance the prospects

that stations with limited resources will continue to operate after the end of the transition.¹⁶

F. Flexibility Should Also Be Given To Public Television Stations With NTSC Channels Outside the Core and DTV Assignments Inside the Core

In addition to the relief requested above, APTS/PBS request the Commission to allow public television stations with an NTSC channel outside the core and a DTV assignment inside the core to operate an NTSC station on the in-core DTV channel during the transition and to switch operation to DTV on that same channel at any point during the transition, as long as no additional interference is caused. Alternatively, these public television stations should be permitted to defer construction of their in-core DTV facility beyond the current construction deadline and to activate their in-core DTV station at any time during the transition.

Either of these formulations would permit a public station the flexibility (a) to seek funding to construct and operate a DTV station simultaneously with the continued operation of its NTSC facilities, as presently contemplated by the rules, or (b) to effectuate a transition to DTV responsibly without incurring the costs of dual station operation where the station concludes it cannot afford the costs of operating two stations. For the reasons described above, the public would not be unduly disadvantaged by affording such flexibility to public television stations. The stations opting not to maintain a dual operation during the transition would nevertheless convert to DTV operation by the conclusion of the transition period and their abandoned channel would be recoverable at that time. Moreover, because commercial stations can be relied upon to drive the transition to DTV in their

¹⁶ If the Commission decides not to give public television licensees this option, it should make it clear that it will consider requests by stations to employ the overnight switch option where the licensee has been unable to raise the funds to construct the DTV station or lacks the resources to operate two stations simultaneously.

markets, the overall momentum to convert to DTV operations would not significantly be affected by the isolated decisions of public television stations not to construct and operate DTV facilities simultaneously with the operation of their NTSC stations.

G. Public Television Licensees With Two Stations In A Market Should Be Permitted To Mix and Match Their NTSC And DTV Allotments, Provided No Additional Interference Results

Public television licensees with two stations in a market should be afforded special DTV construction options. As with any multiple station licensee, it would be particularly burdensome for these licensees to construct multiple DTV stations simultaneously; however, the existence of a second station in the same market affords the possibility of a workable compromise that would ensure that the public retains access to both the licensee's analog and digital services throughout the transition period while easing the construction burden on the licensee. Specifically, these licensees should be allowed to use their DTV allotments in connection with either of their duopoly stations, at their discretion, as long as no additional interference is caused.¹⁷

Licensees with two stations in the same market should also be permitted to employ the overnight switch option and convert one of their stations to DTV on either their current NTSC or their allotted DTV channel. They would then operate the other station as an NTSC facility rather than construct two DTV facilities before the conclusion of the construction period. The licensee would complete

¹⁷ For example, North Texas Public Broadcasting, Inc. ("North Texas") is the licensee of Station KERA-TV, Channel 13, Dallas and Station KDTN, Channel 2, Denton, Texas. KERA was allotted DTV Channel 14 and KDTN was allotted DTV Channel 31. North Texas should be permitted to use DTV Channel 14 with either KERA or KDTN and DTV Channel 31 with the other station.

construction of the second DTV facility before the conclusion of the transition and the Commission would recover the unused channels when the licensee discontinues NTSC operation at the end of the transition.¹⁸ This procedure will assure continued public television service in both transmission modes throughout the transition period, while minimizing the costs of conversion by those licensees with two stations in the same market.

H. Public Television Stations Should Not Be Subject To Any Minimum Hours Of Operation Requirement

APTS/PBS applaud the Commission's decision to give broadcasters the freedom to use the DTV spectrum as they believe best, provided one channel is used for digital television broadcasting. That decision will allow broadcasters to develop new and creative services while assuring the public of the existing, free, over-the-air service.

APTS/PBS are concerned, however, that the public television stations will be adversely affected by the requirement that the digital channel operate during the same hours as the licensee's NTSC station and the partial-to-full simulcast requirement, since those requirements will effectively impose a minimum operating requirement on the DTV station. As indicated above, many public television stations are concerned about their ability to operate two television stations, given the power requirements of DTV operation. For many of these stations, requiring them to operate a DTV station whenever their NTSC station is operating—frequently 18 hours per day—will exceed their financial resources and

¹⁸ In the example in the previous footnote, North Texas would be permitted to continue operating Station KERA on Channel 13 as an NTSC station, flash-cut Station KDTN to DTV on Channel 2 during the transition period and use it as KERA's DTV channel. North Texas will then convert Station KERA to DTV at the end of the transition on Channel 13, Channel 14 or Channel 31.

can chill their ability or willingness to construct a DTV station in the first instance. It was for these reasons that APTS/PBS earlier urged the Commission not to impose any minimum hours of operation on noncommercial DTV licensees.¹⁹ Those reasons apply equally to the matching operation and simulcast requirements. Indeed, since there are no minimum operating requirements for non-commercial licensees, these requirements could have the perverse result of providing an incentive for public television stations to reduce their NTSC operating hours in order to comply with these requirements.²⁰

In order to avoid that possibility, APTS/PBS request the Commission to give public television licensees the option of determining how many hours per day they will operate their DTV station. There is no risk that public television licensees will not offer DTV services during a reasonable portion of the day if the Commission gives them this discretion. They incurred the costs of constructing DTV stations and PBS will be delivering high definition television programming at least during prime time. Since public television licensees are dependent on audience contributions for their operating costs, they will have the economic incentive to operate their DTV station the maximum number of hours they can afford. Consequently, relieving them of the obligation to operate their DTV stations when they are operating their NTSC stations will not adversely affect the transition to DTV.

¹⁹ See Comments of the Association of America's Public Television Stations and Public Broadcasting Service in MM Docket No. 87-268, filed January 7, 1993 at pp. 25-26.

²⁰ The obligation also would impose significant and unnecessary costs on public stations that broadcast a substantial amount of instructional programming, since it is unlikely that the schools receiving this programming would have DTV equipment in the short-term. These stations would consequently be required to pay the power costs of broadcasting DTV instructional programming before its intended audience -- the schools -- are in a position to utilize that programming.